



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 7, 2005

Ms. Lona Chastain  
Assistant General Counsel  
Open Records Coordinator  
Texas Workforce Commission  
101 East 15<sup>th</sup> Street  
Austin, Texas 78778-0001

OR2005-10991

Dear Ms. Chastain:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 237504.

The Texas Workforce Commission (the "commission") received a request for information pertaining to a specified fraud investigation involving the requestor's claim for unemployment insurance benefits.<sup>1</sup> You claim that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the commission's obligations under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which

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<sup>1</sup>As you have failed to submit a copy of the request for information, we take our description from your brief.

exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You failed to submit to this office a copy of the written request for information. Thus, the commission failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or that third party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally); 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver); *but see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). In this instance, your claim under section 552.108 does not provide a compelling reason to withhold the submitted information. Therefore, none of the submitted information may be withheld under section 552.108. However, section 552.101 can provide a compelling reason to overcome the presumption of openness. Therefore, we will address your arguments under this exception.

The commission notes that this office issued a previous determination in Open Records Letter No. 2004-3081 (2004) that authorizes the commission to withhold “‘employment information that is obtained or otherwise secured’ by the [commission] from the employer” under section 552.101 of the Government Code in conjunction with section 301.081 of the Labor Code. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under Gov't Code § 552.301(a)). You claim that the requested information is employment information subject to Open Records Letter No. 2004-3081. However, Open Records Letter No. 2004-3081 states “‘this ruling will serve as a previous determination that quarterly tax reports required to be filed by employers for Unemployment Insurance tax purposes are not subject to disclosure under the Act, pursuant to section 552.101 of the Act and section 301.081 of the Labor Code. We note that this previous determination does not encompass all ‘employment information.’” Upon review, we find that the submitted information does not include an employer's quarterly tax reports. Therefore, Open Records Letter No. 2004-3081 is not applicable to the information at issue in this instance. We will, therefore, consider your arguments against disclosure.

Section 552.101 of the Government Code exempts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. The commission claims that a portion of the submitted information is confidential under federal law.<sup>2</sup> This office has stated that the regulations found at part 603 of title 20 of the Code of Federal Regulations send a clear message that “claim information” in the files of a state unemployment compensation agency is to be disclosed only to a “receiving agency,” as defined in the regulations, or to other specified parties. *See* 20 C.F.R. §§ 603.1 *et seq.*; *see also* Open Records Decision No. 476 at 4 (1987). Otherwise, pursuant to section 603.7 of title 20 of the Code of Federal Regulations, state unemployment compensation agencies such as the commission must protect the confidentiality of claim information. “Claim information” means information regarding whether an individual is receiving, has received, or has applied for unemployment compensation, as well as “[a]ny other information contained in the records of the State employment compensation agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits.” *See* 20 C.F.R. § 603.2(c)(1), (5). We also note that the names of employers and employees who file unemployment compensation appeals fall within the definition of “claim information” and that the federal regulations prohibit the commission from disclosing this information. *See* Open Records Decision No. 476 at 4 (1987). In addition, the federal Social Security Act requires states to comply with the directives of the United States Department of Labor (the “department”) in administering state unemployment insurance (“UI”) programs, and a department directive, UI Program Letter No. 34-97, specifies the conditions under which such claim information may be released. Thus, unless otherwise authorized to release claim information under part 603 or UI Program Letter No. 34-97, the commission must withhold claim information in its entirety from a requestor under the Act. *See* 20 C.F.R. pt. 603; UI Program Letter 34-97 (allowing disclosure to private entity under a written agreement that requires informed consent from the individual to whom the information pertains).

You state that the commission has received no indication that any of the release provisions specified in the federal directive are applicable in this instance. Based on your representations and our review of the submitted information, we conclude that the claim information pertaining to a claimant other than the requestor is made confidential by federal law. Therefore, the claim information that you have marked must be withheld from disclosure under section 552.101 of the Government Code in conjunction with federal law.<sup>3</sup>

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<sup>2</sup>We note that a federal statute or an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision No. 476 (1987) (addressing statutory predecessor to section 552.101).

<sup>3</sup>We note that you do not seek to withhold the requestor’s claim information under section 552.101 in conjunction with federal law.

Section 552.101 also encompasses section 301.081 of the Labor Code, which provides in part:

(a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of [title 4 of the Labor Code.] The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.

(b) The commission may require from an employing unit sworn or unsworn reports regarding persons employed by the employing unit as necessary for the effective administration of this title.

(c) Employment information thus obtained or otherwise secured may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the proper administration of this title.

Labor Code § 301.081(a)-(c). In Open Records Decision No. 599 (1992), we concluded that the “employment information” addressed in section 301.081(c) refers to information obtained from employers’ records and from reports that employers are required to file with the commission. This includes information the commission requires employers to submit for purposes of determining an employer’s tax liability or evaluating a claim for unemployment insurance benefits from a former employee. Open Records Decision No. 599 at 2 (1992) (predecessor statute); *see also* Labor Code § 301.001 (commission shall administer state unemployment insurance program). However, information that the commission creates and assigns to an employer is not confidential under section 301.081 because it was not obtained from the employer’s records. Open Records Decision 559 at 5.

After review of your arguments and the submitted information, we agree that the portion of the submitted information that we have marked consists of employment information obtained from the employers’ records and from reports that employers are required to file with the commission. *See* Labor Code § 301.081(c). However, we conclude that you have not established that the remaining information is confidential on this basis. Therefore, the commission must withhold the information we have marked under section 552.101 in conjunction with section 301.081.

In summary, the commission must withhold the claim information pertaining to claimants other than the requestor under section 552.101 of the Government Code in conjunction with federal law. The portion of the submitted information that we have marked is confidential

under section 301.081 of the Labor Code and must be withheld under section 552.101. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Joseph James". The signature is fluid and cursive, with a long horizontal stroke at the end.

L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/segh

Ref: ID# 237504

Enc. Submitted documents

c: requestor  
(w/o enclosures)